

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

JESSIE SHORE,)	
)	
Plaintiff,)	
)	
v.)	Case No.1:13CV155 SNLJ
)	
SOUTH SCOTT COUNTY)	
AMBULANCE DISTRICT AUXILIARY,)	
)	
Defendant.)	

MEMORANDUM

This matter is before the Court on review of the file following assignment to the undersigned. Plaintiff filed a complaint in state court alleging a claim of disability discrimination under state law. The case was removed to this Court based on diversity jurisdiction. The notice of removal (Doc. #1) asserts that this Court has jurisdiction because the lawsuit is between citizens of different States and the matter in controversy exceeds the sum of \$75,000.¹ The notice and complaint allege that plaintiff is a citizen of Arkansas and defendant is a citizen of Missouri.

The Eight Circuit has admonished district courts to “be attentive to a satisfaction of jurisdictional requirements in all cases.” *Sanders v. Clemco Industries*, 823 F.2d 214, 216 (8th Cir. 1987). Because this action has been removed from state court to this Court, the party seeking to invoke diversity jurisdiction is the defendant; however, the party seeking removal has burden of establishing federal subject matter jurisdiction. *In re Business Men’s Assur. Co. of America*, 992 F.2d 181, 183 (8th Cir. 1993). “The Court has the duty to determine its jurisdiction and to raise the issue of jurisdiction *sua sponte*, if necessary.” *Hutton v. Teva Neuroscience, Inc.*, 4:08CV1010 CEJ, 2008 WL 4862733, at *1 (E.D. Mo. Nov. 7, 2008) (citing *James Neff*

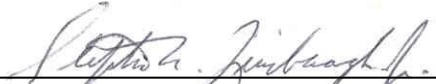
¹ The Notice of Removal does not sufficiently plead the amount in controversy. Because removal was improper on other grounds, it is not necessary to address this issue.

Kramper Family Farm Partnership v. IBP, Inc., 393 F.3d 828, 830 (8th Cir. 2005). If the Court determines that it does not have jurisdiction over a removed action, it must remand the action to the state court where it originated. 28 U.S.C. § 1447(c).

“28 U.S.C. § 1441(b) makes diversity jurisdiction in a removal case narrower than if the case was originally filed in federal court by the plaintiff.” *Brake v. Reser's Fine Foods, Inc.*, 4:08CV1879 JCH, 2009 WL 213013, at *1 (E.D. Mo. Jan. 28, 2009) (citing *Hurt v. Dow Chem. Co.*, 963 F.2d 1142, 1145 (8th Cir. 1992)). Under § 1441(b), the so-called “forum defendant rule,” a defendant cannot remove a case based on diversity jurisdiction “if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” See *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 90 (2005); *Horton v. Conklin*, 431 F.3d 602, 604 (8th Cir. 2005). “[T]he violation of the forum defendant rule is a jurisdictional defect and ‘not a mere procedural irregularity capable of being waived.’” *Horton*, 431 F.3d at 605 (quoting *Hurt v. Dow Chemical Co.*, 963 F.2d 1142, 1146 (8th Cir. 1992)). This Court, therefore, lacks subject matter jurisdiction over a removed case where one of the defendants is a citizen of Missouri, even if complete diversity of citizenship otherwise exists. See *Motion Control Corp. v. SICK, Inc.*, 354 F.3d 702, 705-06 (8th Cir. 2003) *Hinkle v. Norfolk Southern Ry. Co.*, 4:05CV1867 CAS, 2006 WL 2521445, at *2 (E.D. Mo. Aug. 29, 2006).

Accordingly, because the defendant is a Missouri citizen, removal is barred by 28 U.S.C. § 1441(b)(2), this Court does not have subject matter jurisdiction over this cause of action, and remand is required.

Dated this 29th day of October, 2013.


STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE

